

Review of the Aboriginal Heritage Act

Victorian Government Response

17 June 2013

Overview

Victoria's unique and precious Aboriginal cultural heritage is fundamental to the history and social well-being of our State. We have a collective responsibility to ensure this rich cultural heritage can be appreciated and enjoyed by future generations.

The Victorian Government is committed to the protection of Aboriginal cultural heritage. The scheduled review of the *Aboriginal Heritage Act 2006* (the Act) provided an opportunity to reflect on and improve the way Aboriginal cultural heritage is managed and protected in our state.

Since the review commenced in September 2011, the Victorian Government has heard from a broad cross section of individuals and organisations involved in managing and protecting Aboriginal cultural heritage – Aboriginal groups, industry, cultural heritage advisors, land managers, interest groups and all levels of government. The review received over 140 written submissions and held more than 30 workshops and consultation meetings in which stakeholders generously contributed their experiences and insights from working with the Act as well as their suggestions for improvement.

The Victorian Government gratefully acknowledges the input of all individuals and organisations who contributed their knowledge, expertise and vision to the review.

Throughout the review process, nearly all stakeholders expressed their support for the Act's frameworks for managing cultural heritage, which has provided more certainty and consistency, and better outcomes for project planning and heritage protection. Industry and Registered Aboriginal Parties also highlighted the improved relationships fostered through the cultural heritage management plan process.

Suggested areas for improvement focused around the cultural heritage management plan process, particularly ways to improve timeliness and reduce costs and red tape. Enforcement and public awareness were also keen areas of interest, alongside other options for improvement supported by stakeholders from across different interest groups. The Summary Report (August 2012) outlined stakeholders' responses to these options for improving the Act.

The Parliamentary Inquiry into the Establishment and Effectiveness of Registered Aboriginal Parties (Inquiry) – conducted by Parliament's Environment and Natural Resources Committee – received submissions and heard evidence from a diverse range of interested stakeholders across Victoria. The Report of the Inquiry (14 November 2012) contained 38 detailed recommendations about the operation of Registered Aboriginal Parties and the Victorian Aboriginal Heritage Council (Council). These recommendations have been influential in shaping the response to this review. The Victorian Government's response to the Inquiry's recommendations was tabled in parliament on 14 May 2013.

Victoria is recognised as having Australia's leading system for the protection and management of Aboriginal cultural heritage. The Victorian Government proposes to retain the key concepts and institutions of the Act and focus on progressing changes achieving the greatest outcomes for stakeholders interacting with the Act, reduce regulatory burden on the community and ensure ongoing protection for Aboriginal cultural heritage.

Already, some early reforms have been initiated in response to the review and Inquiry. The Victorian Government proposes to introduce legislative amendments to the Act as soon as practicable and continue to implement a range of operational and policy reforms in response to the findings of the review and the recommendations of the Inquiry.

The guiding principles for reforms are:

- **The primacy of Traditional Owners in cultural heritage protection and management through effective, accountable and transparent decision making**
- **Sustainable Registered Aboriginal Parties**
- **An efficient, effective best practice Aboriginal cultural heritage management system**
- **Certainty for all land users**

The Victorian Government also proposes to use the opportunity of amending the Act to clarify a range of definitions and administrative issues in the legislation to make the Act more transparent and accessible for all Victorians. A Victorian Aboriginal Cultural Heritage Strategy would be developed to underpin the operation of the Act, once it is amended. This strategy would guide the implementation of all of the legislative and policy reforms to Victoria's Aboriginal cultural heritage management system.

The primacy of Traditional Owners in cultural heritage protection and management through effective, accountable and transparent decision making

The review found strong support for the Act's objectives to accord respect and status to Aboriginal people. Stakeholders welcomed stronger recognition for Aboriginal people as the primary guardians, keepers and knowledge holders of their heritage by:

- further prioritising Traditional Owners as decision-makers about and managers of Aboriginal cultural heritage
- improving the processes around applying for and decisions about Registered Aboriginal Party status
- transferring functions currently with the Secretary to the Victorian Aboriginal Heritage Council and Registered Aboriginal Parties where appropriate.

The Parliamentary Inquiry closely examined the operations of the Victorian Aboriginal Heritage Council and the Registered Aboriginal Party system. The recommendations of the Inquiry complement the review findings, and both have informed this response.

Victorian Government response

1. The Victorian Government recognises and respects the inherent cultural rights and responsibilities Traditional Owners have over their traditional country. In responding to Recommendation 3.1 of the Parliamentary Inquiry and in line with the Victorian Aboriginal Heritage Council's current approach, the Victorian Government proposes to amend the Act to prioritise Traditional Owners in the Registered Aboriginal Party appointment process. This would also ensure consistency with groups recognised under the Commonwealth *Native Title Act 1993*, and Victoria's *Traditional Owner Settlement Act 2010*. Some flexibility would be retained enabling organisations representing historical and contemporary cultural heritage interests to have their interests appropriately recognised.

2. The Victorian Government proposes to introduce a suite of measures to improve the Registered Aboriginal Party appointment process which involves providing support and guidelines for Registered Aboriginal Party applicants and new oversight powers for the Victorian Aboriginal Heritage Council, and new reporting and incorporation requirements for both the Council and Registered Aboriginal Parties.
3. The Office of Aboriginal Affairs Victoria proposes to continue to work together with the Department of Justice on shared and collaborative research supporting Traditional Owner groups seeking outcomes under native title and cultural heritage legislation.
4. The Victorian Government proposes to continue to support the Victorian Aboriginal Heritage Council as a skills-based expert body which more resembles the Victorian Heritage Council, especially in the areas of public awareness, advisory, policy, research facilitation and reporting functions.
5. The Victorian Aboriginal Heritage Council would assume responsibility for the Victorian Aboriginal Heritage Register.
6. It is also proposed to strengthen the role of Traditional Owners in managing and returning Ancestral remains.
7. The Victorian Government proposes to amend the Act to enable Registered Aboriginal Parties, rather than the Secretary, to determine applications for cultural heritage permits.
8. The Victorian Government proposes to link the implementation of the Act with the Victorian Aboriginal Affairs Framework.

Sustainable Registered Aboriginal Parties

Registered Aboriginal Parties undertake the management and protection of cultural heritage in their registered areas on behalf of all Victorians. The review highlighted the critical role Registered Aboriginal Parties play in ensuring an efficient and effective cultural heritage management system.

Sponsors valued the direct contact they had with Registered Aboriginal Parties, particularly through the cultural heritage management plan process, which improved their understanding and appreciation of Aboriginal cultural heritage.

The Victorian Government supports measures to achieve sustainable Registered Aboriginal Parties. Stakeholders across the board welcomed a broader role, and called for more support for Registered Aboriginal Parties.

A Registered Aboriginal Party's business units are frequently one part of the broader operations of a Traditional Owner organisation. Traditional Owner organisations can play a critical role in generating regional employment and economic development. The Victorian Government proposes to continue to work with Traditional Owner organisations to support economic development and realise their aspirations for economic sustainability.

The Victorian Government also notes the importance of ensuring Traditional Owner organisations seeking Registered Aboriginal Party responsibilities are of sufficient size in order to maximise their viability and capacity. In some instances, this may involve neighbouring groups forming a combined organisation with internal governance arrangements capable of representing different groups under a shared umbrella. Improving the sustainability of Traditional Owner organisations is consistent with the Victorian Aboriginal Economic Strategy under the Victorian Aboriginal Affairs Framework.

Victorian Government response

1. The Victorian Government proposes to broaden the roles of Registered Aboriginal Parties to include, among other roles, undertaking country mapping, strategic site protection and exploring the potential for their involvement in a compliance regime.

2. The Victorian Government proposes to work with Registered Aboriginal Parties and the Victorian Aboriginal Heritage Council to develop a program to preserve heritage places of particular significance and/or vulnerability.
3. The Victorian Government proposes to investigate and establish an equitable and efficient sustainable financial structure to support the ongoing work of Registered Aboriginal Parties and the Victorian Aboriginal cultural heritage management system.
4. The Office of Aboriginal Affairs Victoria will explore opportunities to redirect resources to continue to strengthen Registered Aboriginal Party capacity, and support strategic heritage management activities.

An efficient, effective best practice Indigenous cultural heritage management system

The Victorian Aboriginal cultural heritage management system is widely recognised as the best in Australia. The Victorian system establishes Traditional Owner decision making, consistent cultural heritage management processes, certainty for industry and comprehensive and mandatory cultural heritage management standards and benchmarks. The Victorian Government's response to the Inquiry demonstrates its commitment to maintaining and improving upon the best practice status of its cultural heritage management system.

The review found where Registered Aboriginal Parties are in place this has streamlined consultation processes and costs.

Stakeholders identified areas such as reducing the cost and time involved in preparing a cultural heritage management plan as an area for improvement. Stakeholders also identified opportunities to improve the Act by undertaking more strategic, upfront assessment, strengthening compliance and enforcement of the Act, streamlining the cultural heritage permit process and introducing a more fit-for-purpose approach for managing cultural heritage values on public land.

Victorian Government response

The following responses are proposed in relation to the major issues raised:

Cultural heritage management plans:

1. The Victorian Government supports changes to the cultural heritage management plan process to emphasise cultural significance as well as scientific values, on outcomes for managing and protecting heritage and in order to reduce the regulatory burden on the community.
2. The Victorian Government proposes to amend the Act to better reflect the nature of Aboriginal cultural heritage and make necessary changes to the definition of significant ground disturbance consistent with this proposal.
3. The Victorian Government proposes to support Registered Aboriginal Parties to undertake important work such as country mapping.
4. The Victorian Government proposes to make cultural heritage management plans more practical and user-friendly.
5. The Victorian Government proposes to prioritise guidelines targeting key sectors and industries and to publish strategic land use guidelines.
6. The Office of Aboriginal Affairs Victoria will explore options around charging an evaluation fee for areas without Registered Aboriginal Parties, with these fees contributing to the financial sustainability of Registered Aboriginal Parties and the Victorian Aboriginal cultural heritage management system.

Cultural heritage advisors:

1. The Victorian Government proposes to improve quality standards for cultural heritage advisors through a voluntary accreditation system and to work with the Victorian Aboriginal Heritage Council to establish clearer criteria for working as a cultural heritage advisor.
2. More Aboriginal Victorians are working in the cultural heritage management industry. The Victorian Government proposes to encourage this participation by exploring further opportunities to boost the employment of more Aboriginal people in the cultural heritage industry, including continuing and enhancing the existing Certificate IV in cultural heritage management, and through a proposed cadetship or apprenticeship system in partnership with the cultural heritage advisor industry.

Cultural heritage permits:

1. The Victorian Government proposes to introduce different types of cultural heritage permits, including research and rehabilitation permits, tailored to reflect the varying needs and activities of the community.
2. It is also proposed to allow permits to be amended, or transferred between proponents and researchers, with Registered Aboriginal Party agreement.

Public land management agreements:

1. The Victorian Government proposes to introduce a new type of agreement for public land management. This new agreement would allow a public land manager and a Registered Aboriginal Party to negotiate and agree on how cultural heritage is to be managed for a range of standard low impact works and maintenance activities for an area of land, such as a national park.

Cultural heritage agreements:

1. The Victorian Government proposes to raise awareness about agreements by developing a model agreement, and by bringing together Registered Aboriginal Parties, Catchment Management Authorities and others to discuss ways to promote and create incentives for agreements.
2. The Victorian Government proposes to explore improving incentives to land owners to enter into cultural heritage agreements.

Improved integration of cultural heritage management with other land use planning systems:

1. The Victorian Government proposes to strengthen the integration of land use planning systems.
2. The Victorian Government proposes to embed a process of considering Aboriginal heritage values as part of the process of amending planning schemes.
3. The Victorian Government proposes to continue to incorporate cultural values into public land management through the direct involvement of Traditional Owners in these processes.
4. The Victorian Government proposes to report on the state of Aboriginal cultural heritage in Victoria every five years, consistent with the State of the Environment Report. This will improve links between natural and cultural heritage management and bring Victoria into line with practice in other States.

Compliance and enforcement:

The review highlighted a number of significant barriers to enforcement under the current provisions of the Act. The following proposals largely focus on addressing these barriers.

1. The Victorian Government proposes to remove barriers to prosecutions, including obstacles to prosecuting corporations and extending the statute of limitations for the prosecution of some offences.
2. The Victorian Government proposes to work closely with the Victorian Aboriginal Heritage Council to develop a comprehensive enforcement strategy covering the spectrum of education, compliance and enforcement activities.
3. The Victorian Government will investigate a number of proposals for reforms to prevent and deter unlawful damage to Aboriginal cultural heritage, including warning notices, new offences including strict liability offences and random compliance checks.
4. Consistent with recommendation 6.3 of the Parliamentary Inquiry, the Victorian Government supports Registered Aboriginal Parties undertaking compliance checks of cultural heritage management plan recommendations.
5. The Victorian Government also proposes to amend the Act to streamline the appointment of inspectors, and broaden the range of people who may be appointed as inspectors.
6. The Victorian Government also proposes to amend the Act to improve the transparency and accountability around cultural heritage audits and stop orders and to remove the requirement for Government to pay the cost of a cultural heritage advisor for an audit.

Dispute resolution:

1. The Victorian Government proposes to draft dispute resolution guidelines in partnership with the Victorian Aboriginal Heritage Council.

Victorian Aboriginal Heritage Register:

1. In addition to transferring responsibility for the Register to the Victorian Aboriginal Heritage Council, Registered Aboriginal Parties (or the Council in areas without Registered Aboriginal Parties) would be able to place conditions on access to the Register.
2. The Victorian Government proposes to amend the Act to extend access to the Victorian Aboriginal Heritage Register to include Catchment Management Authorities, Heritage Victoria and Registrars in New South Wales and South Australia for border regions.
3. Fee-for-service arrangements would be introduced to support the operation of the Register in limited circumstances.

Public awareness:

1. The Victorian Government proposes that the Office of Aboriginal Affairs Victoria will partner with the Victorian Aboriginal Heritage Council and Registered Aboriginal Parties to develop a public awareness and communications strategy for promoting Victoria's unique Aboriginal cultural heritage.

Certainty for all land users

The Victorian Government recognises certainty – of decision makers, of cultural heritage management requirements, of costs, and of processes – is critical for all land users who interact with Victoria's cultural heritage management system. The Act already provides a high degree of certainty for all of these aspects. The Victorian Aboriginal Heritage Council and Registered Aboriginal Parties are established as the key decision makers. Cultural heritage management plan requirements are spelt out in the Act and the Regulations. Costs for evaluating cultural heritage management plans

and other processes are regulated. The cultural heritage management plan system is clearly stepped out, with decision points along the way with statutory timelines for most decisions.

While the review found the cultural heritage management plan process provides certainty for industry about when and how to assess and manage Aboriginal cultural heritage, certainty for all land users can be improved in these areas.

Victorian Government response

1. New decision making timeframes, structures and policies are proposed for the Council. It is also proposed to continue support for the Right People for Country project, which facilitates efficient Council decisions about Registered Aboriginal Parties.
2. Consultation (for example in preparing a cultural heritage management plan) in areas without Registered Aboriginal Parties would focus on Traditional Owners. The Victorian Aboriginal Heritage Council would be able to provide advice to sponsors on who to consult in these areas.
3. It is proposed the Office of Aboriginal Affairs would develop guidelines to assist sponsors to consult with Traditional Owners about cultural heritage management plans in areas without a Registered Aboriginal Party.
4. The Victorian Government proposes to introduce measures to provide more transparency, certainty and accountability around Registered Aboriginal Party fees.
5. The Victorian Government proposes changes to triggers for small residential development and to improve certainty about when a cultural heritage management plan is required.
6. The Victorian Government proposes *Model Engagement Protocols* to further support effective and consistent engagement between developers, cultural heritage advisors and Registered Aboriginal Parties.
7. The Victorian Government proposes to allow amendments to cultural heritage management plans after approval.
8. A 'stop-the-clock' mechanism during the evaluation period is proposed to enable sponsors to respond to requests for further information.
9. The Victorian Government proposes to introduce an appeal to the Victorian Civil and Administrative Tribunal in the event a Registered Aboriginal Party or the Office of Aboriginal Affairs Victoria fails to make a decision within the evaluation period.
10. Currently there is no statutory time limit for evaluating cultural heritage permits. The Victorian Government proposes to streamline the cultural heritage permit system by introducing statutory timeframes for permit decisions of 30 days with a 'stop-the-clock' mechanism for seeking further information from the applicant.
11. The Victorian Government supports measures to make it simpler and faster to record small artefact scatters and isolated finds.

Conclusion

The Victorian Government proposes, over the remainder of 2013, to work on specific legislative and policy amendments to realise the above reforms. A draft Bill is proposed to be introduced in 2014. The proposed Victorian Aboriginal Cultural Heritage Strategy would begin development in 2014. Once implemented, these reforms would maintain and enhance Victoria's best practice Aboriginal cultural heritage management system, which delivers control with accountability for Traditional Owners over cultural heritage decisions and supports sustainable Registered Aboriginal Parties.